IN THE HIGH COURT OF BOMBAY AT GOA
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CIVIL REVISION APPLICATION NO. 52 OF 2001

Shri Gopal M. Kanekar,
major, married, r/o
Mapusa, Goa. ... Petitioner.

Versus

K. K. Mahammad,
major, r/o House No.53,
Ward no.15, Caranzalem,
Ilhas, Goa. ... Respondent.

Shri A. D. Bhobe, advocate for the petitioner.

Shri M. P. Almeida, advocate for the respondent.

CORAM : F. I. REBELLO, J.

DATE : 24th July, 2003.

ORAL JUDGMENT

The petitioner, by the present petition impugns the Order dated 18th July, 2000, setting aside the Judgment and Order dated 20th November, 1995, in an application taken out in proceedings in execution. The trial Court had decreed the suit by Judgment and Decree dated 20th November, 1995. The appellant preferred an appeal before this Court which was Appeal No.78/96. That Appeal came to be dismissed by this Court by Order dated 9th December, 1996, for failure to comply with the Order dated 7th October, 1996.

2. In the meantime, the petitioner herein initiated proceedings for execution, being Execution Application No.28/96/A. It is at this stage that the respondent herein contended that he had earlier moved an application before the Court and it was dated 18th November, 1995, to set aside

the Order dated 13th November, 1995 alongwith medical certificate. The trial Court allowed the said application.

3. It is not necessary for me to go into the controversy as to whether the order was passed in the suit or in a proceeding for execution, as the application would not be maintainable either in the proceedings for execution or in the suit. Once Judgment is passed, the trial Court becomes functus officio, except to exercise jurisdiction in case of an ex parte decree under Order 9 Rule 13 of the C.P.C. of in the event there is a review petition.

4. It was sought to be contended on behalf of the respondent that the trial Court had jurisdiction to entertain the application as this was not an application for setting aside a decree, but an application made earlier, which was not considered by the Court at the time when it proceeded to decree the suit ex parte. Whatever be the position, to entertain an application, the Court must have jurisdiction. After the suit is decided the Court becomes functus officio. At the highest, non-consideration of the application would be a ground for a party to raise the point in appeal.

5. In the instant case, the Court had no jurisdiction. Clearly therefore, the Court acted without jurisdiction and consequently, the impugned Order is liable

to be set aside.

In the light of that the petition has to be allowed in terms of prayer clause (a). Civil Revision Application disposed of accordingly.

F. I. REBELLO, J.

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